vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5803 OF 1996

Indian United Mills No.5
having its Mill at A.G. Pawar
Lane, Mumbai - 400 027

2. The General Manager
India United Mills NO.5,
having his office at A.G. Pawar
Lane, Mumbai - 27 ... Petitioners

V/s.

1. Manohar Laxman Parab
residingat r/o. R.M.M.S.
G.D. Ambekar Marg, Parel
Mumbai - 12

2. P.S. Ghose,
Member, Industrial Court
7th floor, Arun Chambers
Tardeo Roade, Mumbai ... Respondents

Mr.I.A. Saiyed for Petitioners
Mrs.N.D. Buch for Respondent No.1

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JANUARY 18, 2007**

ORAL JUDGMENT:

. The Petitioner has challenged the order of the Industrial Court by which it has held that the Respondent-workman was entitled to continue in service till the age of 63 years in accordance with the Standing Orders applicable to him.

2. The undisputed facts are that the Respondent-workman was employed in the Petitioner-Mill

since 1945. He started working as a Mazdoor when he joined service. During the course of time, he started working as the Chief Clerk. A letter was issued to him on 10.5.1991 informing him that as he had attained the age of retirement and that his services would stand terminated w.e.f. 7.11.1991. The workman contested the claim of the Petitioners that he had attained the age of superannuation when he completed the age of 60 years, as according to him he ought to have been continued in service till the age of 63. By a letter of 29.10.1991, the respondent-workman contested the action being taken by the Petitioners in terminating his services at the age of 60 years. Since there was no favourable response from the Petitioners, the respondent workman filed a complaint on 29.10.1991 contending that the Petitioners had committed an unfair labour practice under Items 1, 5, 9 and 10 of Schedule IV of the MRTU & PULP Act.

3. A written statement was filed by the Petitioners contending that the respondent could not have continued in service beyond the age of 60 years since he was the Chief Clerk. It was contended that the respondent was working as a Head Time Keeper in the grade of the Chief Clerk and was responsible for the supervision and control of the time office. It was further pleaded that the Respondent’s work was of a supervisory nature and

therefore, he was not covered by the Standing Orders applicable for clerks in Cotton Textile Mills which had been settled by the Industrial Court under section 36 (3) of the Bombay Industrial Relations Act.

4. The Industrial Court on the basis of the material before it, came to the conclusion that the respondent was not doing work of a supervisory nature and that he was covered by the Standing Orders framed for Clerks in Cotton Textile Mills. On this basis, it was held that the Petitioners ought to have continued the respondent in service upto the age of 63 years and could not have retired him at the age of 60 years.

5. Mr.Saiyed, appearing for the Petitioners, vehemently argued that the Petitioners had designated the respondent-workman as a Chief Clerk and hence, the Standing Orders for Clerks were not applicable. The learned Advocate submits that the Industrial Court ought to have held that the Chief Clerk was managing the entire time office alone. He was doing work of a supervisory nature or administrative work and therefore, was not covered by the aforesaid Standing Orders. He relies on the judgment in the case of *National Textile Corporation (Mah. North Ltd.) & Ors. v/s. S.M. Tambe & Anr.*, **2000 II CLR 20** as the also the judgment in the

case of *India United Mill No.2 v/s. Shamrao Krishna Thambre & anr.* **(Writ Petition No.1185 of 2002)** decided on 24.3.2005.

6. On a bare perusal of the judgment impugned before this Court, it is obvious that the Petitioners have not led any evidence whatsoever. Assuming that the workman was categorised as a Chief Clerk, there is no evidence on record to support the submission made Mr.Saiyed that Chief Clerk was doing the work which was supervisory or administrative in nature. The judgment of this Court in *NTC v/s. S.M. Tambe (supra)* does not support the submission of the learned advocate. This Court has held that the retirement age of a workman who did not fall in the category of 'operatives' or 'clerks' was 60 years and such a workman was not entitled to continue upto the age of 63 years. In the present case, there is no evidence at all to indicate that the Chief Clerk was to be treated differently from the other clerks who were employed by the Mill. The Standing Orders which are settled for clerks in the cotton textile mills do not make any distinction between a Chief Clerk or any other clerk. Apart from this, the learned advocate has been unable to demonstrate or produce any material to indicate that the Chief Clerk was treated differently from the other clerks.

7. Mr.Saiyed relies on the judgment of the *India United Mill No.2 v/s. Shamrao Krishna Thambre & Anr.* (supra) to submit that the present matter ought to be remanded for rehearing and for recording of evidence. In the case of India United Mill No.2 (supra), a learned Single Judge of this Court was concerned with a workman who was working as a Head Clerk from January 1993. The Mill had retired him at the age of 60 years and not at the age of 63 years. Evidence was led before the Court by both the workmen and the employer. The Court found that the employer had issued a chargesheet against the workman for disciplinary action. The employee had also endorsed his recommendation on a leave application of another employee. He had also admitted in his deposition the existence of a hierarchy. The learned Judge has observed thus:

> 4. ... In my view, this issue is of significance in the present case because if the employer had treated Head Clerks as workman and had granted to them the benefit of the extended age of retirement of 63 years under Standing Order 11-A, then it would not be open to the employer to adopt a contrary position in relation to the First Respondent. ...

The matter has then been remanded for fresh hearing before the Industrial Court by producing relevant material.

8. A factor which must be borne in mind in the present case is that the Petitioners failed to lead any evidence before the Industrial Court. Therefore, presuming that the Respondent was so designated as a Chief Clerk, it would be necessary for the Petitioners to establish that a Chief Clerk was to be treated differently from other clerks. The matter has been pending in this Court for almost more than 10 years despite which there is no material on record to indicate that a Chief Clerk was to be considered as a Supervisor or that he was doing administrative work. The mere plea that there was only one post of Chief Clerk would not by itself lead to the conclusion that it would amount him doing supervisory work. Admittedly, there are several other clerks employed in the time office. The Respondent could not have been considered as a Supervisor only because he was designated as a Chief Clerk without there being any evidence or material on record to establish this fact. The Standing Order 11A framed for clerks employed in Cotton Textile industry reads thus:

> 11A. Any employee shall retire from service on attaining the age of 60 years, but a male employee shall be retained in service, if he continues to be efficient upto the age of 63 years, provided that when retrenchment becomes necessary, an employee who has completed the age of 60 may be retired in preference to younger men.

There is no material on record to indicate that when the Respondent reached the age of 60 years he was no longer efficient and could not therefore have been continued upto the age of 63.

9. The Industrial Court was right in concluding that the Respondent was entitled to continue in service upto the age of 63 years and ought not have been retired at the age of 60 years. In my view, the order of the Industrial Court must be upheld and the Petition dismissed.

10. Mr.Saiyed as a last resort submitted that the complaint be remanded to the Industrial Court as had been done in Writ Petition No.1125 of 2002. However, this would mean that the Petitioners would be able to lead evidence after more than 10 years when they had chosen not to do so in the first place. This submission of Mr.Saiyed cannot be accepted after such a protracted delay.

11. When the petition was admitted, the Petitioners were directed to deposit an amount of Rs.42,000/- in this Court and the Respondent No.1 was permitted to

withdraw the same on furnishing security. However, the Respondent has not withdrawn the amount which has been deposited in this Court and therefore, he will be entitled to the same including the accrued interest. If any further amount is due and payable to the workman as a consequence of the orders of the Industrial Court being upheld the same shall be paid to the workman within eight weeks from today. The respondent is at liberty to withdraw the amount deposited in this Court together with the accrued interest.

12. Writ Petition is disposed off accordingly.